

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
CRIMINAL DOCKET NO.: 3:98CR18**

WILLIE LEE BERRY,)	
)	
Petitioner,)	
)	ORDER
vs.)	
)	
UNITED STATES OF AMERICA,)	
)	
Respondent.)	
_____)	

THIS MATTER is before the Court on Petitioner’s “Petition Under F.R.C.P. Rule 60(b) 1-3,” filed August 15, 2006 [Document #67].

This Motion does not raise any new issues than those presented in Petitioner’s “Petition Under F.R.C.P. 60(b) 1-3,” filed December 15, 2005. That is, Petitioner is again attempting to collaterally attack his sentence under the guise of Rule 60(b) of the Federal Rules of Civil Procedure, which is deemed to be a successive § 2255 Motion. As previously found by this Court in its August 3, 2006 Order, Petitioner has not received certification from the Fourth Circuit Court of Appeals to file a successive § 2255 motion. Because the Court has construed Petitioner’s instant Motion as a motion to vacate, set aside or correct his sentence pursuant to § 2255, the Court cannot reach the merits of Petitioner’s claims until he receives certification from the Fourth Circuit Court of Appeals that his claims will contain a new rule of constitutional law that was previously unavailable and that the Supreme Court has made retroactive to cases on collateral review. 28 U.S.C. §§ 2244, 2255. Consequently, for the reasons stated by the Court in its August 3, 2006 Order, Petitioner’s “Petition under F.R.C.P. Rule 60(b) 1-3” is dismissed.

IT IS, THEREFORE, ORDERED that Petitioner’s “Petition Under F.R.C.P. Rule 60(b)

1-3" is hereby **DISMISSED** without prejudice as successive.

Signed: October 2, 2006

A handwritten signature in black ink, reading "Richard L. Voorhees", written over a horizontal line.

Richard L. Voorhees
United States District Judge

